

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**BUILDERS MUTUAL INSURANCE
COMPANY,**

Plaintiff,

v.

**BUILDERS' MUTUAL CASUALTY
COMPANY,**

Defendant.

Case No.: 4:08-CV-01555 DDN

DEFENDANT'S MOTION FOR EXPEDITED DISCOVERY

Pursuant to Fed. R. Civ. P. 26(d), Defendant Builders' Mutual Casualty Company ("Defendant") moves the Court for an Order authorizing expedited discovery in order to prepare its response to Plaintiff Builders Mutual Insurance Company's ("Plaintiff") Motion for Preliminary Injunction and for the hearing on that Motion.¹ In support of this Motion, Defendant states as follows:

1. On October 8, 2008, Plaintiff filed its Verified Complaint alleging claims against Defendant for federal trademark infringement, federal unfair competition, trademark dilution, common law trademark infringement, common law unfair competition, violation of the Anti-Cybersquatting Consumer Protection Act, and injunctive relief.

2. On October 14, 2008, Plaintiff filed its Motion for Preliminary Injunction, seeking preliminary injunctive relief against Defendant. A hearing on the Motion has not been set.

3. Defendant needs to obtain expedited discovery to discover highly relevant information regarding the facts at issue to adequately prepare its response to the Motion and for

¹ Defendant objects to venue and anticipates filing a Motion to Transfer Venue and alternative Motion to Dismiss for Lack of Venue.

the preliminary injunction hearing. Expedited discovery will serve to narrow the issues and assist the parties in presenting the case to the Court. Defendant will suffer irreparable injury if not granted expedited discovery because Defendant's counsel will not be able to adequately prepare its response to the motion and for the preliminary injunction hearing. Any potential inconvenience or prejudice to Plaintiff pales in comparison to the risk of injury Defendant faces and is further offset by the fact that Plaintiff chose to file this Motion, chose to include eleven (11) affidavits, and is the one seeking expedited relief from this Court.

4. Defendant requests that, prior to the hearing on Plaintiff's Motion for Preliminary Injunction, the following actions be taken with respect to discovery:

- a. Plaintiff must provide available dates for depositions of all eleven (11) witnesses that provided affidavits in support of its Motion, at least two (2) weeks before any hearing on the Motion for Preliminary Injunction;
- b. That Defendant be allowed to conduct written discovery of Plaintiff immediately under Fed. R. Civ. P. 26(d)(1);
- c. That any response to Interrogatories, Requests for Production, or Requests for Admission served by Defendant on Plaintiff be provided to Defendant within ten (10) days of this discovery being served on Plaintiff;
- d. That any documents or things responsive to Requests for Production served by Defendant on Plaintiff be provided to Defendant within ten (10) days of this discovery being served on Plaintiff; and
- e. That Defendant can take the deposition of any witness upon three (3) calendar days' notice.

5. As more fully set forth in Defendant's Response to Plaintiff's Request for Hearing and the exhibits attached thereto, lead counsel for Defendant has attempted on numerous occasions in good faith to resolve this discovery issue with counsel for Plaintiff including Bridget Hoy and Catherine Stuart, over the telephone and via e-mail from October 15, 2008 through October 23, 2008, in accordance with Local Rule 37-3.04, but after those sincere efforts to resolve this dispute, counsel has been unable to reach an accord.

WHEREFORE, Defendant Builders' Mutual Casualty Company respectfully requests that the Court grant its Motion for Expedited Discovery, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 24th, 2008, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which sent Notice of Electronic Filing to the following:

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